

Panaji, 10th October, 2013 (Asvina 18, 1935)

SERIES II No. 28

OFFICIAL GAZETTE

GOVERNMENT OF GOA



PUBLISHED BY AUTHORITY

GOVERNMENT OF GOA

Department of Education, Art & Culture

Directorate of Technical Education
College Section

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Order

No. 16/304/PF/VAS/GEC/DTE/2013/2010

Read: Memorandum No. 16/139/Filling up
posts/GEC/DTE/03-04/P.F.III/708 dated
06-06-2013.

On the recommendation of the Goa Public Service Commission conveyed vide their letter No. COM(I)/5/18(2)/2012/17 dated 18-04-2013, Government is pleased to appoint Shri Vinay Amrut Shirodkar on temporary basis to the post of Professor in Mechanical Engineering (Group 'A' Gazetted) at Goa College of Engineering, Farmagudi, Ponda-Goa, with intial pay fixed at ₹ 43,000/- in the Pay Band of ₹ 37,400-67,000 plus Academic Grade Pay ₹ 10,000/- w.e.f. the date of joining as per the terms & conditions contained in the Memorandum cited above.

Shri Vinay Amrut Shirodkar will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by Medical Board, Goa Medical College & Hospital, Bambolim vide certificate No. DH/GMC/MED-B/13/24 dated 27-06-2013. His character and antecedents have been verified and nothing adverse is reported against him as conveyed by the Additional District

Magistrate, South Goa, Margao-Goa vide letter
No. 2013/8961/2/MAG/144/9000 dated 07-09-2013.

By order and in the name of the Governor
of Goa.

Vivek B. Kamat, Director & ex officio Addl.
Secretary (Technical Education).

Porvorim, 30th September, 2013.

Order

No. 25/4/85/2013/DTE/2073

Read: Memorandum No. 25/4/85/2013/DTE/
1656 dated 28-08-2013.

On the recommendations of the Goa Public Service Commission conveyed vide their letter No. COM/I/5/34(8)/2007/179 dated 17-07-2013 Government approval is hereby conveyed to appoint Shri Rohan Rohidas Naik on temporary basis to the post of Lecturer in Electronics and Communication Engineering (Group 'A' Gazetted) in the Government Polytechnic, Bicholim on an initial pay of ₹ 15,600/- with AGP of ₹ 5,400/- and other allowance as admissible in the pay band of ₹ 15,600-39,100 plus AGP of ₹ 5,400/- with effect from the date of joining the post as per the terms and conditions contained in the memorandum cited above.

Shri Rohan Rohidas Naik will be on probation for a period of two years.

He should join duties within 30 days of the receipt of this order, failing which this order is liable to be cancelled without further notice.

He has been declared fit by the Medical Board, Goa Medical College & Hospital, Bambolim vide letter No. 4/105/85/H/GMC/2013/426 dated

05-09-2013. His character and antecedents has been verified by the Dy. Collector & SDM, Ponda Sub-Division, Ponda vide No. SDM/PON/CH.Cert./2013/1760 dated 26-09-2013.

By order and in the name of the Governor of Goa.

Vivek B. Kamat, Director & ex officio Addl. Secretary (Technical Education).

Porvorim, 3rd October, 2013.

Directorate of Art and Culture

Order

Ref. No. DAC/10/T.P./Comm./2013-14/12596

Government is pleased to constitute State Level Tripurari Poornima Celebration Committee under the Chairmanship of Hon. Minister for Art & Culture to organize Tripurari Poornima Festival-2013, as hereunder.

| Sr. No. | Name of the Committee members | Status |
|---------|---|----------------|
| 1 | 2 | 3 |
| 1. | Shri Dayanand Mandrekar, Hon. Minister for Art & Culture | Chairman. |
| 2. | Shri Anant Shet, Dy. Speaker, Goa Legislative Assembly | Vice-Chairman. |
| 3. | Dr. Pramod Sawant, M.L.A., Sankhali | Vice-Chairman. |
| 4. | Shri Nilesh Cabral, Chairman, GTDC, MLA, Curchorem | Member. |
| 5. | Secretary, Art & Culture | Member. |
| 6. | Director of Information & Publicity | Member. |
| 7. | Director, Dept. of Tourism | Member. |
| 8. | Managing Director, GTDC | Member. |
| 9. | Principal, Goa College of Art, Panaji | Member. |
| 10. | Dy. Collector, Bicholim | Member. |
| 11. | Chairman, Sanquelim Municipal Council | Member. |
| 12. | President, Deepawali Utsav Samithi, Vittalapur | Member. |
| 13. | Sarpanch, Village Panchayat Karapur, Sarvan | Member. |
| 14. | Superintendent of Police (North) | Member. |

| 1 | 2 | 3 |
|-----|--|-----------------------|
| 15. | Dy. SP. Traffic (North) | Member. |
| 16. | SDPO, Bicholim | Member. |
| 17. | Chief Officer, Sanquelim Municipal Council | Member. |
| 18. | Executive Engineer, PWD, Divisional Office, WD-V, Panaji | Member. |
| 19. | Shri Sagar Jawdekar, Panaji-Goa | Convener. |
| 20. | Shri Prasad Lolayekar, Director of Art & Culture | Member. Secretary. |

The Committee shall advise the Govt. in the organization of Tripurari Poornima Festival that will be held on 17th November, 2013 at Vitthalapur, Sanquelim-Goa.

By order and in the name of the Governor of Goa.

Prasad V. Lolayekar, Director & ex-officio Jt. Secretary (Art and Culture).

Panaji, 3rd October, 2013.

Department of General Administration

Order

No. 14/8/2001-GAD-III (Part II)/3419

Government is pleased to extend the ad hoc promotion in respect of the following Section Officers for a period of one year with effect from the date indicated against each of them:

| Sr. No. | Name of the Section Officer | Extended upto |
|---------|-------------------------------------|------------------------------|
| 1. | Smt. Fatima Saldinha Fernandes | 19-06-2013 to 18-06-2014. |
| 2. | Shri Shekhar K. Amonkar | 19-06-2013 to 18-06-2014. |
| 3. | Kum. Geeta D. Naik | 19-06-2013 to 18-06-2014. |
| 4. | Smt. Fatima D'Sa e D'Souza | 12-07-2013 to 11-07-2014. |
| 5. | Shri Minguel Santana Rodrigues | 20-07-2013 to 19-07-2014. |
| 6. | Shri John Caetano A. A. De Souza | 01-08-2013 to 31-07-2014. |

This issues with the recommendation of the Goa Public Service Commission as conveyed vide their letter No. COM/II/11/42(4)/2012/1062 dated 06-09-2013.

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (GA)).

Porvorim, 26th September, 2013.



Notification

No. 2/2/2012-GAD-H

Read: Annexure-I to Notification No. 2/2/2012-GAD-H dated 16-11-2012.

Government is pleased to declare Wednesday, 16th October, 2013 (Asvina 24, 1935) as "Public Holiday" instead of "14th October, 2013" in the State of Goa on account of Id-UI-Zuha (Bakri Id) as indicated in Annexure-I to the Notification dated 16-11-2012 read in preamble. Consequently, 14th October, 2013, shall be a working day.

The holiday declared is under the Negotiable Instruments Act, 1881 (Act 26 of 1881).

By order and in the name of the Governor of Goa.

Harish N. Adconkar, Under Secretary (GA-I).

Porvorim, 8th October, 2013.



Department of Labour

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Notification

No. 28/1/2013-LAB/472

The following award passed by the Industrial Tribunal and Labour Court at Panaji-Goa on 10-05-2013 in reference No. LC-II/IT/03/13 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).

Porvorim, 9th May, 2013.

IN THE LABOUR COURT-II GOVERNMENT OF GOA AT PANAJI

(Before **Shri Suresh N. Narulkar**, Hon'ble
Presiding Officer)

Case No. Ref. LC-II/IT/03/13

Shri Dinesh Sakhalkar,
Rep. by the General Secretary,
Goa Union of Journalists,
Shram Shakti Bhavan,
Sixth Floor, Patto Plaza,
Panaji-Goa. Workman/Party I
V/s

M/s. Lokmat Media Pvt. Ltd.,
101, 1st Floor, Rizvi Chambers,
Caetano Albuquerque Road,
Opp. Alfran Plaza,
Panaji-Goa. Employer/Party II

Workman/Party I remained absent.

Employer/Party II represented by Adv. Miss A. Naik h/f Adv. A. Palekar.

Panaji, Dated: 10-05-2013.

AWARD

1. In exercise of the powers conferred by Clause (d) of sub-section (1) of the Section 10 of the Industrial Disputes Act, 1947, (Central Act, 14 of 1947) the Government of Goa by Order 01-02-2013, bearing No. 28/45/2012-LAB/56, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour thereafter assigned the present reference to this Labour Court-II for its adjudication vide its order dated 06-02-2013.

1. "Whether the action of the Management of M/s. Lokmat Media Private Limited, Rizvi, Chambers, Panaji-Goa, in terminating the services of it's Workman Shri Dinesh Sakhalkar, Photographer, with effect from 21-11-2011 is legal and justified?

1. If not, what relief the Workman is entitled?"

2. On receipt of the reference, a case was registered under No. LC-II/IT/03/2013 and registered A/D notice was issued to the Parties. In pursuance to the said notice, the Employer/Party II (for short, "Employer") put in their appearance through Adv. A. Palekar. The Workman/Party I (for short 'Workman'), was duly served by

registered post A. D. at the address of the General Secretary, Goa Union of Journalists, Shrama Shakti Bhavan, Sixth Floor, Patto Plaza, Panaji-Goa. However, neither Workman nor any representative of the Goa Union of Journalists appeared in this Labour Court II on the scheduled dates of hearing. Consequently, no claim statement has been filed on behalf of the Workman Shri Dinesh Sakhalkar, although ample opportunities were given. On 09-05-2013, Ld. Adv. Miss A. Naik h/f Adv. A. Palekar, representing the Employer orally submitted that neither Workman nor the Goa Union of Journalists are interested in pursuing the reference by remaining absent for last several hearings and orally requested for passing no dispute Award.

3. Heard Ld. Adv. Miss A. Naik appearing for the Employer.

4. The proceedings before the Industrial Tribunal or Labour Court are judicial in nature even though the Indian Evidence Act, does not apply to the proceedings, but principle underlying the said Act is applicable to the proceedings before the Industrial Court. It is well settled that if a Party challenged the legality of an Order, burden lies upon him to prove illegality of an Order and if no evidence is produced, the Party invoking, jurisdiction of the Court must fail. In this case the Government of Goa has referred the dispute to the Industrial Tribunal of Goa at the instance of the Workman/General Secretary, Goa Union of Journalists aggrieved by the decision of the termination of the Workman. Burden lies upon the Workman/Goa Union of Journalists to set out grounds challenging the validity of Termination Order and to prove that the Termination Order is illegal. The Workman/Goa Union of Journalists however, neither filed claim statement nor produced evidence by remaining absent. In the circumstances, there is no material before this Court for recording a finding that the Order of Termination passed by the Employer is illegal or unjustified. In the absence of evidence, the Court has no jurisdiction to hold the Order of Termination illegal.

In view of the above, I proceed to pass the following order:

ORDER

1. It is held that the action of the Management of M/s. Lokmat Media Private Limited, Rizvi Chambers, Panaji-Goa, in terminating the services of its Workman Shri Dinesh Sakhalkar,

Photographer, with effect from 21-11-2011, is legal and justified.

2. It is further held that the Workman Shri Dinesh Sakhalkar, Photographer, is not entitled to any relief.

3. No order as to costs.

Inform the Government accordingly.

Sd/-
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Notification

No. 28/1/2013-Lab/471

The following award passed by the Industrial Tribunal and Labour Court, at Panaji-Goa on 08-05-2013 in reference No. IT/31/07 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Meena Priolkar, Under Secretary (Labour).

Porvorim, 09th July, 2013.

IN THE LABOUR COURT-II
GOVERNMENT OF GOA
AT PANAJI

(Before Shri Suresh N. Narulkar, Hon'ble
Presiding Officer)

Case No. Ref. IT/31/07

Shri Anand Dessai,
Rep. by All Goa
General Employees Union,
P. O. No. 90,
Vasco-da-Gama, Goa. Workman/Party-I.
V/s
M/ s. Link Hospitality
Service Pvt. Ltd.,
c/o. Gomango Bar and
Restaurant,
Kundaim - Goa. Employer/Party-II.

Party I/Workman represented by Adv. T. Pereira.
Party II/Employer represented by Adv. P. Chawdikar.

Panaji, dated: 08-05-2013

AWARD

1. In exercise of the powers conferred by Section 10 (1)(d) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by Order dated 12-06-2007, bearing No. 28/15/2007-LAB/562, referred the following dispute for adjudication to the Industrial Tribunal of Goa. The Hon'ble Presiding Officer, Industrial Tribunal-cum-Labour Court in turn assigned the matter to this Labour Court II vide its Order dated 23-06-2008.

"(1) Whether the action of the management of M/ s. Link Hospitality Services Private Limited, at Gomango Bar and Restaurant, Kundaim, in discharging from service Shri Anand Dessai, Kitchen Supervisor, with effect from 07-03-2006, on the grounds of loss of confidence, is proper, legal and justified?

(2) if not, what relief the Workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/31/2007 and registered A/D notices were issued to the Parties. In pursuance of the said notices, the Parties put in their appearance. All Goa General Employees Union (for short, "union") filed its Statement of Claim on behalf of the Workman, Shri Anand Dessai on 29-1-2008 at Exhibit 9. Facts of the case in brief as pleaded by the union are that the workman/Party I (for short, "Workman") Shri Anand Dessai was employed as 'Kitchen Supervisor' in the establishment of the Employer/Party II (for short, "Employer") namely Gomango Bar and Restaurant, Kundaim, Ponda-Goa with effect from 27-01-2004. The union stated that as a 'Kitchen Supervisor' the duties of the workman were to check the refrigerators and items stored therein, to bring raw materials from the store-keeper in the store room and give it to the cook, to check the cleanliness of all the utensils, to read over the kitchen order tokens (KOT) to the cook, to receive the cooked dishes from the cook, to do the garnishing of the cooked dishes and to handover the cooked dishes to the waiters, to check the stock at the closing time of the kitchen and to keep the same in proper places (including refrigeration, wherever necessary). The union stated that the Workman had taken a lead in forming the trade union of all the workers of their establishment and joined the Gomantak Mazdoor Sangh. The union stated that immediately upon receiving the information of formation of the union, the Employer decided to victimize the Workman. The union stated that the Workman was prevented from joining his duty on and from 07-03-2006. The

union stated that the Workman was not given any notice of termination or notice pay, retrenchment compensation or any other legal dues. The union stated that neither memo, charge-sheet was given to the workman nor conducted an enquiry against him. The union stated that on 08-03-2006, the Gomantak Mazdoor Sangh raised an industrial dispute on behalf of the Workman. The union stated that during the pendency of the said industrial dispute, all the workers including the Workman resigned from the Gomantak Mazdoor Sangh and joined them, thus continued to espouse the cause of the termination of service of the Workman. The union stated that at the final stage of conciliation proceedings on 09-02-2007, the Employer for the first time came out with a plea of alleged lack of confidence in the Workman without giving any justification for the same either to the workman or to them. The union submitted that the action of the Employer in refusing employment to the Workman on and from 07-03-2006 amounts to illegal termination of service of the Workman as neither enquiry has been conducted against the Workman nor offered or paid him legal dues. The union therefore prayed that the termination of services of the Workman be held as illegal and unjustified and the Workman be reinstated in service with full back wages and continuity in service.

3. The Employer filed their written statement on 11-07-2008 at Exb.13. The Employer, by way of preliminary objections submitted that the Workman was employed with them as a 'Kitchen Supervisor' and as such he is not a 'Workman' within the meaning of section 2(s) of the I. D. Act, 1947 nor dispute raised by him is an 'industrial dispute' within the meaning of the provisions of the I. D. Act, 1947 and hence the present reference is not maintainable.

4. The Employer however, admitted that the workman was employed by them with effect from 27-01-2004 as a 'Kitchen Supervisor'. The Employer stated that there was no change in his terms of employment during the entire tenure of his employment. The Employer stated that they have lost confidence in the Workman's abilities to continue in their services and therefore he was discharged from employment due to loss of confidence. The Employer submitted that All Goa General Employees Union has no locus standi to raise the present dispute. The Employer stated that the workman used to carry out the supervisory duties such as sanctioning the leave of subordinate staff, he was the sole in-charge of

restaurant kitchen-stores, independently monitoring, co-ordinating and controlling the stores and raw materials for restaurant kitchen and used to decide about the requirement of materials, distribution of jobs amongst the subordinate staff and such other supervisory and administrative duties as are required for the said purpose. The Employer stated that the Party I being a supervisor, was entrusted with the independent job of handling the raw material. The Employer stated that at the time of discharge of service of the Party I with effect from 05-03-2006, a cheque amounting to Rs. 9,714/- dated 07-03-2006 bearing No. 194576 drawn on HDFC bank was offered to him as his legal dues, however the Party I refused to accept the same. The Employer stated that the question of issuing of memo or charge-sheet or for that matter conducting enquiry does not arise. The Employer denied the overall case of the union as pleaded in their claim statement filed in the present proceeding and prayed for dismissal of the present reference.

5. Thereafter, the union filed its rejoinder on 11-07-2008 at Exb.14. The union by way of its rejoinder, confirms and reiterates all the submissions and averments made by him in its statement of claim filed in the present proceedings to be true and correct and denies all the statements and averments made by the Employer in their written statement filed in the present proceedings which are contrary and inconsistent to the statements and averments made by them.

6. Based on the pleadings filed by the respective parties, this court framed the following issues on 11-08-2008 at Exb.16. The said issues framed have been re-casted vide order dated 17-03-2012 passed by this court disposing off an application of the workman as well as Employer at Exb. 28 and Exb. 27 respectively.

1. Whether the Party I/Workman prove that he is a "workman" as defined u/s 2(s) of the Industrial Disputes Act, 1947?
2. Whether the Employer/Party II prove that the present dispute is not an "industrial dispute" within the meaning of section 2(k) of the Industrial Disputes Act, 1947?
3. Whether the Employer/Party II prove that All Goa General Employees Union has no locus standi to raise the present dispute?
4. Whether the Employer/Party II proves that it has validly terminated the services of

the Party I by way of discharge w. e. f. 07-03-2006 due to loss of confidence?

5. Whether the Party I/Workman proves that the refusal of employment to him by the Employer/Party II w. e. f. 07-03-2006 is illegal and unjustified?
6. Whether the Party I/Workman prove that he is entitled for any relief?
7. What Award? What Order?

7. My answers to the aforesaid issues are as under:

| | |
|-------------------|---------------------|
| Issue No. 1 | In the Affirmative. |
| Issue No. 2 | In the Negative. |
| Issue No. 3 | In the Negative. |
| issue No. 4 | In the Negative. |
| Issue No. 5 | In the Affirmative. |
| Issue No. 6 and 7 | As per Final Order. |

REASONS

8. Issue No.1:

I have heard the oral arguments of Ld. Advocates appearing for the respective parties.

9. Ld. Adv. Shri T. Pereira representing the union, during the course of his oral arguments submitted that the workman Shri Anand Dessai was employed by the Employer as 'Kitchen Supervisor' in its establishment namely Gomango Bar and Restaurant, Kundaim, Ponda-Goa with effect from 27-01-2004. He submitted that as a 'Kitchen Supervisor', the predominant nature of duties and responsibilities of the Party I were to report for duty at 11:00 a.m. on all working days, to check the refrigerators and the items stored therein, to bring raw materials from the store keeper in the store room and give it to the cook, to check the cleanliness of all the utensils, to read over the kitchen order tokens (KOT) to the cook, to receive the cooked dishes from the cook, to do the garnishing of the cooked dishes and to handover the cooked dishes to the waiters, to check the stock at the closing time of the kitchen and to keep the same in proper places (including refrigerators, whenever necessary). He submitted that the employer pleaded that in addition to aforesaid duties performed by the Party I, he was performing certain supervisory and administrative duties. He submitted that the Employer has however failed to prove the same by leading cogent evidence. He therefore submitted that the aforesaid duties performed by the Party I were of

manual and clerical in nature. The Party I is therefore a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.

10. On the contrary, Ld. Adv. P. Chawdikar representing the Employer during the course of his oral arguments submitted that admittedly the Party I was appointed by them as 'Kitchen Supervisor' in their establishment with effect from 27-01-2004. He submitted that as a 'Kitchen Supervisor', the Party was predominantly performing the duties of supervisory and administrative in nature such as allocating duties to the kitchen staff, sanctioning their leaves, distribution of jobs amongst the subordinates in the kitchen staff involved in food production and kitchen utility as well as other supervisory and administrative duties as are required for the said purpose, in addition to the aforesaid duties disclosed by the Party I. He submitted that the Party I was independently monitoring, co-ordinating and controlling the kitchen stores and raw materials along with food production. He submitted that the Party I was approving the raw material requisitions and receiving the same from the main stores for the purpose of food production. He submitted that the Party I was distributing the raw material to the respective production staff in the kitchen and ensuring that the correct menu items are handed over to the respective stewards after matching the manual kitchen order tickets (KOTs) given by them at the time of ordering food production with the KOTs obtained by stewards from the cashier. He submitted that at the time of termination of services of the workman, he was drawing wages Rs. 3760/- per month. He therefore submitted that the Party I is not a 'workman' within the meaning of section 2(s) of the Industrial Disputes Act, 1947. In support of his oral contentions, he relied upon the following judgments:

- a. In the case of Young Women's Christian v/s Smt. Jyotsna Paul reported in (2005) I LLJ 643 of Hon'ble High Court of Delhi.
- b. In the case of G.M. Pillai v/s A P. Lakhnikar and Ors., reported 1998 LLR pg. 310 of Hon'ble High Court of Bombay.
- c. In the case of Vishnu P. Kamat v/s. P. O. Industrial Tribunal, Panaji, Goa and Anr., of Honble High Court of Bombay passed in writ petition No. 167/1999.
- d. In the case of Narsinha Anant Joshi v/s Century Shippings and Ors., reported in 1994-II LLN 928, of Hon 'ble High Court of Bombay.

- e. In the case of Umakant S. Deshpande v/s Gujrat Electricity Board, reported in 2002-I-LLJ 21, of Hon'ble High Court of Gujarat.
- f. In the case of Shrikant Vishnu Palwankar v/s P. O., First Labour Court and Anr., reported in 1992 (II) LLJ 378, of Hon'ble High Court of Bombay.
- g. In the case of Standard Chartered Bank vis. Vandana Joshi & Anr., reported in 2010 I CLR 163, of Hon'ble High Court of Bombay.
- h. In the case of All India Reserve Bank Employee's Association and Anr., v/s Reserve Bank of India and Anr., reported in 1965 II LLJ 175, of Hon'ble Supreme Court of India.
- i. In the case of Seraikella Glass Works Limited v/s Second Industrial Tribunal W. B. and Ors., reported in 1992 I LLJ 1158, of Hon'ble High Court of Calcutta.
- j. In the case of Anand Regional Co-op. Oil Seedgrowers Union Ltd., v/s Shaileshkumar Harshadbhai Shah reported in (2006) 6 SCC 548, of Hon'ble Supreme Court of India.
- k. In the case of Apparao Basavannappa Manore v/s M/s. Wandleside National Conductors Ltd. and Ors., reported in 1995 I LLJ 243, of Hon'ble High Court of Bombay.
- l. In the case of Mamraj(Shri) v/s Management of M/s. Shanti Developers and Promoters (I) Ltd. and Anr. reported in 2005 II CLR 487, of Hon'ble High Court of Delhi.
- m. In the case of Burmah Shell Oil Storage and Distributing Co. of India Ltd., v/s The Burmah Shell Management Staff Association and Ors., reported in AIR 1971 SCC 922, of Hon'ble Supreme Court of India.
- n. In the case of Union Carbide (India) Ltd., v/s Ramesh Kumbha and Ors., reported in (1999) I BOM C.R. 705, of Hon'ble High Court of Bombay.
- o. In the case of German Remedies Ltd. v/s Michael Gabriel Lopes and Anr., reported in 1999 (2) L.L.N. 199, of Hon'ble High Court of Bombay.
11. I have carefully perused the entire records of the present case. I have also carefully considered the various oral submissions made by the Ld. Advocates appearing for the respective parties.

12. The Employer disputed the status of the Party I as 'workman' within the meaning of section 2(s) of the I. D. Act, 1947. It is therefore necessary to refer to the provisions of section 2(s) of the I. D. Act, 1947 which defines the term "Workman". Section 2(s) of the I. D. Act, 1947 reads as under:

"Section 2 (s), 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied and for the purposes of any proceedings under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or a consequence of that dispute or dismissal, discharge or retrenchment has laid to that dispute, but does not include any such person;

- (1) *who is subject to the AIR Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957) or*
- (2) *who is employed in the police service or as an Officer or other employee of a prison or*
- (3) *who is employed mainly in a managerial or administrative capacity*
- (4) *who, being employed in a supervisory capacity draws wages exceeding Rs. 1,600/- per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."*

13. Thus, in order to prove that the Party I is/was a "Workman" as defined u/s 2(s) of the I. D. Act, 1947, one has to prove that he was performing the duties of manual, unskilled, skilled, technical, operational, clerical or supervisory in nature and it is not enough that he/she was not performing the duties of supervisory, administrative and managerial in nature.

14. It is the settled principles of industrial jurisprudence that whether a particular employee is a "workman" or not, as defined under section 2 (s) of the Industrial Disputes Act, 1947 depends upon the predominant nature of duties and responsibilities performed by him at the time of termination of his services. Neither the Party I nor Employer has produced on record written duties and responsibilities of the Party I entrusted to him as a 'kitchen supervisor'. It is therefore necessary to look into the evidence adduced by both the parties in support of their pleadings respectively.

15. The Party I has pleaded and also produced on record oral evidence to prove his predominant nature of duties performed by him at the time of termination of his service. The Party I, in his oral evidence on record deposed that as a Kitchen Supervisor his duties were to check the refrigerators and the items stored therein, to bring raw materials from the store keeper in the store room and to give them to the cook, to check the cleanliness of all utensils, to read over the kitchen order tokens (KOT) to the cook, to receive the cooked dishes from the cook, to do the garnishing of the cooked dishes, to handover the cooked dishes to the waiters, to check the stock at the closing time of the kitchen and to keep the same at proper places (including refrigerators whenever necessary). The aforesaid oral evidence adduced by the Party I has not been denied by the Employer. Hence, the aforesaid duties adduced by the Party I in the form of oral evidence stands proved.

16. On the contrary, the Employer pleaded that as a 'Kitchen Supervisor', in addition to the duties mentioned by the Party I, he used to carry out the following supervisory duties such as sanctioning the leave of subordinate staff, he was the sole in-charge of the restaurant kitchen store, he was independently monitoring, co-ordinating and controlling the stores and raw materials for restaurant kitchen, he used to decide about the requirements of material, distribution of jobs amongst the subordinate staff and such other supervisory and administrative duties as are required for the said purpose and was entrusted with the independent job of handling the raw material. The Employer has examined two witnesses namely Shri Ulhas Nabar and Shri Uday Kumarmath to prove its case.

17. The Employer pleaded that the Party I was sanctioning the leave of subordinate staff. Both the witnesses of the Employer namely Shri Ulhas Nabar as well as Shri Uday Kumarmath in their respective oral evidence on record deposed that the Party I was sanctioning the leave of the subordinate staff. Ld. Adv. Shri P. Chawdikar during the course of his cross-examination of the workman produced on record the two leave applications one dated 02-01-2006 and another dated 16-01-2006 of the workers namely Shri Shankar Mola and Shri Manjunath Pande (Exb. E/1-colly). The Party I also admits of having signed the said two leave applications on record at Exb. E/1- colly. However the first witness of the Employer Shri. Ulhas Nabar during the course of

his cross-examination by the Ld. Adv. Shri T. Pereira appearing for the workman admitted that the name of Shri Manjunath Pande as well as Mr. Jay Bahadur Bi are not appearing in the register of wages on record at Exb. E/3-colly. The evidence on record indicates that as per the leave application of Mr. Shankar Mala and Manjunath Pande, they have made their personal arrangement to substitute for them on their proposed leave. The evidence on record indicates that as per the established practice after a senior person in the concerned section sign the leave form, the same was forwarded to the Director, for final approval. The evidence on record further indicates that the said two leave applications at Exb. E/1-colly have neither been signed by the Director nor signed by the personnel of Accounts department. The evidence on record further indicates that in the month of January 2006, Mr. Shankar K. Mola (kitchen helper) has worked for 31 days and has been paid his full basic salary of Rs. 2262/-. The evidence on record indicates that the name of Shri Manjunath Pande does not appear in the register of wages at Exb. E/3-colly. Thus, the evidence on record clearly established that the two leave applications on record at Exb. E/1-colly have neither been sanctioned by the Party I nor he was empowered to do so but, the said two leave applications at Exb. E/1-colly were signed by the Party I as a senior person in the kitchen of the Employer's establishment. The aforesaid evidence on record clearly establish that the Party I was neither empowered to sanction the leave of any of its subordinate staff nor he had sanctioned any leave to the subordinate staff.

18. The Employer further pleaded that the Party I was sole in-charge of restaurant kitchen store and that he was independently monitoring, co-ordinating the stores and the raw material for restaurant kitchen. The Employer also pleaded that Party I used to decide about the requirements of materials, distribution of jobs amongst the subordinate staff and such other supervisory and administrative duties as are required for the said purpose. Both the witnesses examined by the Employer also deposed the aforesaid duties of having performed by the Party I in their respective affidavit-in-evidence.

19. The first witness of the Employer Shri Ulhas Nabar however, in his cross-examination respectively admitted that all vessels, utensils, cutlery, crockery, raw materials and fuels purchased from the outside supplier by the Employer was first received in the store by

him as a store-keeper and thereafter the said raw material etc. were issued from the store to the kitchen as per the requisition from the kitchen against the requisition slip. He admitted that Chef Mr. Chetan Karma was looking after the entire kitchen of the Employer and all the assistant cooks and cooks were working under Chef Mr. Chetan Karma. The said witness of the Employer admitted that there were various types of utility workers working under the Chef and the Assistant Cooks. He deposed that the utility workers were designated as helpers and dish washers. He deposed that the use of various raw materials requisitioned by way of store requisition slips were done by Chef Mr. Chetan Karma. He deposed that the Chef and the assistant cooks used to make an estimate of quantity of materials required in the kitchen for preparing the food and accordingly prepared the store requisition slip by signing the same. He deposed that thereafter the store requisition slip used to handover to the Party I for verifying the present stock as well as required stock as mentioned in the said slip. He further deposed that after verifying the same, the Party I used to sign the store requisition slip in the column "authorized by" and send the same to the main stores. He deposed that Chef Mr. Chetan Karma was the head of the kitchen of the Employer.

20. The second witness of the Employer namely Shri Uday Kumarmath, employed as cashier with the Employer. He deposed the same duties as pleaded by the Employer. He also produced on record six store requisitions slips (Exb.E/5-colly). In his cross-examination, he stated that he had deposed the duties of the Party I upon his personal knowledge as the Party I was his colleague. He deposed that he do not know the person who had signed the store requisition slip against the column "requisitioned by". He deposed that the said store requisition slips at Exb. E/5-colly had not come to him at any point of time during the course of his duty, but has been given to him today morning by Mr. Nabar to produce in the court. He deposed that he could not able to name the person who had signed the said store requisition slip at Exb. E/5-colly against the column "requisitioned by", "issued by" and "received by". He deposed that he do not know whether the Party I used to physically verify the present stock of each item as stated. He deposed that he know one Mr. Rohan Dilip Kamat, the son of the Managing Director who was supervising in the establishment. He deposed that there was one supervisor by name Chandrashekhar. He deposed that the cooks and the assistant cooks in the kitchen used to work

under the supervision of Chef Mr. Chetan Karma. He deposed that in case of absence of any cook or assistant cook of any of the four cuisines, the Chef Mr. Chetan Karma used to make alternate arrangement and adjustment as per availability of staff.

21. Thus, the aforesaid oral evidence on record clearly establish that the Party I was not the sole in-charge of restaurant kitchen store and that he was not independently monitoring, co-ordinating the stores and the raw material for restaurant kitchen. The evidence on record indicates that Party I was not deciding about the requirements of materials, distribution of jobs amongst the subordinate staff and such other supervisory and administrative duties as are required for the said purpose. Thus, the Employer failed to prove that the Party I was sanctioning the leave of subordinate staff and that sale in-charge of restaurant kitchen store and that he was independently monitoring, co-ordinating the stores and the raw material for restaurant kitchen. The Employer also failed to prove that the Party I used to decide about the requirements of materials, distribution of jobs amongst the subordinate staff and such other supervisory and administrative duties as are required for the said purpose.

22. The evidence on record indicates that Party I used to verify the present stock as well as requisitioned stock as mentioned in the store requisition slip issued to him by the Chef or assistant cook by preparing an estimate of quantity of materials required in the kitchen for preparing the food. The Party I used to sign the said store requisition slip in the column "authorized by" after verifying the same. The evidence on record indicates that it was the duty of the Party I to read out the Kitchen Order Ticket (KOT) and tell the respective cooks about the order pertaining to their respective cuisines. The evidence on record indicates that it was the duty of the Party I to assemble all the dishes pertaining to one KOT of one customer and then hand it over to the stewards for serving the same to the customer. The evidence on record indicates that it was the duty of the Party I to verify that all the dishes have been washed properly.

23. Ld. Advocate Shri P. Chawdikar during the course of his oral argument relied upon the following decisions:

24. In the case of **All India Reserve Bank Employees Association and Anr. v/s Reserve Bank of India and Anr.**, reported in 1965 II LLJ

176, the Hon'ble Supreme Court of India has held that *"the Workman, employed to do supervisory work drawing monthly emoluments of less than Rs. 500/- held competent to raise an industrial dispute in regard to their pay scale, even if the pay scale demanded by them goes beyond Rs. 500/- per month. The Hon'ble Court further observed that the word "supervise" and its derivatives are not words of precise import and must often be construed in the light of the context, for unless control, they cover an easily simple oversight and directions as manual work coupled with the power of inspection and Superintendence of the manual work of others."*

25. In the case of **Anand Regional Co-operative Oil Seeds Growers Union Ltd. V/s Shaileshkumar Harshadbhai Shah** reported in (2006) 6 scc 548, the Hon'ble Supreme Court of India has held that *"for determining the question as to whether a person employed in an industry is a "Workman" or not, not only the nature of work performed by him but also the terms of the appointment in the job performed are relevant considerations. The Hon'ble Supreme Court of India further held that the supervision contemplates directions and control. While determining the nature of the work performed by an employee, the essence of the matter should call for consideration. An undue importance need not be given for the designation of an employee or the name assigned to the class to which he belongs. What is needed to be asked is as to what are the primary duties he performs for the said purpose, it is necessary to prove that there were some persons working under him whose work was required to be supervised. Being in charge of the section alone and that to a small one and relating to quality control would not answer the test. A person indisputably carries on supervisory work if he has power of control or supervision in regard to recruitment, promotion, etc. The work involves exercise of tact and independence."*

26. In the case of **Burmah Shell Oil Storage and Distributing Co. of India Ltd. v/s The Burmah Shell Management Staff Association and Ors.**, reported in AIR 1971 SC 922, the Hon'ble Supreme Court of India has held that *"in determining the nature of employment of an employee and in holding that the Employer is employed to do supervisory work, took into consideration not only the work of supervision which he was carrying on in ensuring that the skilled and unskilled manual Workman employed under him were properly doing work of repairs,*

maintenance, servicing and fabricating etc. but also the fact that the Workman function under his control and directions that he allocated and reallocated work to them and that he initiated disciplinary proceedings etc. The Hon'ble Supreme Court further held that the exercise of such power is clearly a part of his supervisory duty."

27. In the case of **G. M. Pillai v/s A.P. Lakhanikar, Judge, IIIrd Labour Court and Ors.**, reported in **1998 LLR 310**, before the Hon'ble High Court of Bombay the Petitioner was working as Superintendent in Quality Control Department and was drawing a salary exceeding Rs. 1600/- p. m. He was inspecting the quality of various products in the quality control department of the company. He used to take decision about the acceptance or rejection of the material received from vendors after considering the inspection report submitted by the group of inspectors. The Hon'ble High Court has held that the petitioner is not a 'workman' as defined u/s 2 (s) of the I. D. Act, 1947.

28. In the case of **Apparao Basavannappa Manore v/s M/s Wandleside National Conductors Ltd. and Ors.**, reported in **1995 I LLJ 243**, the Hon'ble High Court of Bombay has held that "the Petitioner had been working in a supervisory capacity for an unbroken period of 12 years. The work entrusted to him for about 8 months in 1982 also cannot be said to be purely clerical work. It required inputs from the experience he gained in the supervisory capacity to analyze the data, identify material defects and suggest remedy. The court observed that the said work is not clerical work and hence he is not 'workman' within the meaning of section 2 (s) I. D. Act, 1947."

29. In the case of **Narsinha Anant Joshi v/s Century Shipping and Ors.**, reported in **1994 II LLN 928** the Hon'ble High Court of Bombay has held that "the Petitioner was employed mainly in Administrative capacity and any clerical work done by him was only incidental to his employment in administrative capacity. Hence the Labour Court was justified holding that the Petitioner was not a "Workman".

30. In the case of **Ramesh s/o Ramrao Wase v/s the Commissioner, Revenue Division Amravati** reported in **1996 1 LLJ 55** the Hon'ble High Court of Bombay has held that "the status of a person as an employee cannot be decided merely on the basis of his designation. The Hon'ble High Court further held that it is popularly believed that in order to dub the work as a "Supervisory", the person concerned must have control over the

subordinates and the person concerned should have the power to sanction leave, give promotions etc which is only one of the facets of the supervisory work. That is not the be all and end all of the term "supervisory work" if the supervision is required to be made in some other different way, like over the quality of the work and over other aspects such as to see and examine whether the work is completed or not in satisfactory manner and in keeping with specifications, that also becomes the supervisory work, it is therefore clear that really speaking, none of the duties of the Petitioner are of technical nature, but are of supervisory in nature."

31 . In the case of **Shri Vishnu P. Kamat v/s Presiding Officer, Industrial Tribunal, Panaji-Goa and Anr.**, passed in **Writ Petition No. 167/1999**, before the Hon'ble High Court of Bombay the Petitioner was entrusted with duties of sanctioning of leave of operators, checking of productions, stoppage of machinery if the product was found not up to the mark etc. and that these duties are certainly of supervisory in nature. The Hon'ble High Court of Bombay at Goa refused to interfere in exercise of the writ jurisdiction under article 227 of the Constitution of India by observing that the Petitioner is not a 'Workman' as defined u/s 2(s) of the I. D. Act, 1947.

32. In the case of **Standard Chartered Bank V/s. Vandana Joshi and another**, reported in **2010 I CLR 163**, before the Hon'ble High Court of Bombay, the Respondent was designated as 'Personal Financial Consultant'. His primary duties were to achieve allocated business targets, ensuring high quality customer service, ensuring external and internal compliance on all branch transactions, handling difficult customer situations and contributing to the overall achievement growth etc. The Hon'ble High Court has held that the Respondent is not a 'workman' as defined u/s 2(s) of the I. D. Act, 1947. The Hon'ble High Court in para 18 of its judgment observed as under;

"18. The fact that in an organizational structure the employee, in the course of the decision making process, is subject to checks and balances is not a matter which would establish that she/he is a workman within the meaning of Section 2(s). Modern forms of business in corporate organizations put into place a carefully crafted process of checks and balances. Rarely, if ever, would an employee have authoritarian control over business decisions. Employees are made

subject to checks and balances both at the lateral and vertical level. Managerial decisions are subject to verification and approval. The fact that decisions of an employee are subject to verification or subject to a system of controls and balances does not establish that the employee is a workman within the meaning of Section 2(s). Managers do not become workmen because their decisions are structured by processes and approvals. Absolute autonomy is not the norm in managerial decision making. Nor does the law insist on absolute discretion or absolute autonomy for a person to be a manager. Basically the answer to the question must depend upon the dominant nature of the duties and responsibilities”.

33. In the case of **Srikant Vishnu Palvankar v/s Presiding Officer, 1st Labour Court and Anr.**, reported in **1992 (II) LLJ 378**, before the Hon'ble High Court of Bombay the Petitioner was designated as Foreman. He was required to assign the work and supervise 6 to 8 employees, to make recommendations regarding grant of leave and make appraisal of workmen working under him. The Hon'ble High Court has held that “*recommendation of grant of leave and make appraisal of Workmen working under him are one of the index of supervisory function and the Petitioner is not a ‘workman’ as defined u/s 2(s) of the I. D. Act, 1947.*”

34. In the case of **German Remedies Ltd. v/s Micheal Gabriel Lopes and Anr.**, reported in **1999 (2) LLN 199**, before the Hon'ble High Court of Bombay, the Respondent was designated as officer in the personal department of the company. He had to do liaison work with Government offices like E.S.I. Department, E.P.F. Office, Factory Inspector Office and others. His salary was exceeding Rs. 1,600/- per month. He was empowered by the management to exercise his discretion in the best interest of the company. The Hon'ble High Court has held that the Respondent is not a ‘workman’ as defined u/s 2(s) of the I. D. Act, 1947, but he is a person working in a supervisory cadre. The Hon'ble High Court has held that “*it cannot be said that unless an employee has a power to dismiss the persons recruited by him or unless he has power to settle the matters in Court or to take decisions on behalf of the Company, he cannot fall into the category of Supervisor.*”

35. In the case of **Union Carbide (India) Ltd. V/s. Ramesh Kumbla and ors.**, reported in **1999 III LLJ 1489**, the Hon'ble High Court of Bombay

has held that, “*the Respondent was employed as a “Supervisor” in electrical maintenance department. The predominant nature of his work was supervisory and not technical. He had power to recommend leave and authorize overtime work and overtime free meal. He enjoyed certain special privileges and benefits under the pension scheme and gratuity scheme framed by the Company. Therefore it has been held that he must be working in supervisory capacity u/s 2 (s) (IV) of the I. D. Act and merely because sometimes he carried out the work himself, does not detract from the fact that he was a Supervisor.*”

36. In the case of **Umakant S. Deshapande V/s. Gujarat Electricity Board**, reported in **2002-(I) LLJ 21**, before the Hon'ble High Court of Gujarat, the Petitioner was designated as Accounts Officer. His duties were to certify the overtime done by the workers. He was also authorized to certify the temporary advances made by different workers. He was authorized to sanction the leave application of the workers, to issue gate passes to the workers etc. The Hon'ble High Court has held that “*the salary of the Accounts Officer always exceeded Rs. 1600/- p. m. from day one. The nature of duties of the Accounts Officer is such that they have to be excluded from the definition of the “Workman”. The Hon'ble single judge has found that Accounts Officers are indisputably supervising the works of their subordinates and those carrying out the functions of the financial wing at the division and sub-divisional level and are officers in Class I service. In view of all these, it cannot be said that Accounts Officers are “Workmen” coming within the definitions of Sec. 2 (s) of the I. D. Act, 1947.*”

37. In the case of **Mamraj (Shri) v/s Management of M/s Shanti Developers and Promoters (I) Ltd and Anr.**, reported in **2005 II CLR 487**, the Hon'ble High Court of Delhi has held that “*the Petitioner was performing the supervisory duties as site Engineer, though he may have incidentally performed the duty of filling up the site registers. The dominant nature of his work being managerial and supervisory, even if the filling up of the registers was manual and clerical, it was only incidental to his managerial and supervisory capacity.*”

38. In the case of **Seraikella Glass Works Ltd v/s Second Industrial Tribunals W.B. and Ors.** reported in **1992 I LLJ 1158**, the Hon'ble High Court of Calcutta has held that, “*the nature of duties performed by the employees is managerial*

and in carrying out the main duties as supervisor, he was required to do various jobs like assignment of work, allocation of job indenting of materials, recommendation of leave and work appraisal of the workmen working under him and was drawing a salary of Rs. 1600/- p. m. and as such cannot prima facie claim the benefit of workmen within a meaning of section 2(s) of the I. D. Act, 1947."

39. Thus, from the aforesaid series of decisions as quoted above, the position emerged is that in determining the question as to whether a particular employee is a "workman" or not within the meaning of section 2 (s) of the I. D. Act, 1947, depends upon the predominant duties and responsibilities which he was performing at the time of termination of his service. Neither the designation of particular employee nor incidental duties performed by him are relevant while deciding the status of the employee.

40. In the case in hand, the evidence on record indicates that the Party I, as a 'Kitchen Supervisor' used to check the refrigerators and the items stored therein, to bring raw materials from the store keeper in the store room and to give them to the cook, to check the cleanliness of all utensils, to read over the kitchen order tokens (KOT) to the cook, to receive the cooked dishes from the cook, to do the garnishing of the cooked dishes, to hand over the cooked dishes to the waiters, to check the stock at the closing time of the kitchen and to keep the same at proper places (including refrigerators whenever necessary). The aforesaid duties performed by the Party I are mechanical, clerical and manual in nature and one does not require to take any decision. As such, the Party I is a 'workman' within the meaning of section 2(s) of the I. D. Act, 1947. The issue No.1 is therefore answered in the affirmative.

41. Issue No. 2:

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties. I have carefully considered oral submissions made by the Ld. Advocates for the respective parties.

42. The Employer Company by way of preliminary objection submitted that the dispute raised by the workman is not an "industrial dispute" as defined under the Industrial Disputes Act, 1947. It is therefore necessary to refer to the relevant provision of the Industrial Disputes Act, 1947, which defines the term "industrial dispute"

Section 2 (k) of the I.D. Act, 1947 defines the term "industrial dispute" and it means:

Section 2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;

43. While deciding the issue No. 1 herein above, I have come to the conclusion and held that the Party I is a "workman" within the meaning of section 2(s) of the I. D. Act, 1947 and as such the dispute raised by the workman against the Employer pertaining to his non-employment is therefore an 'industrial dispute' within the meaning of section 2(k) of the I. D. Act, 1947. The contention of the Employer that the present claim of the workman is not an 'industrial dispute' as defined under the Industrial Disputes Act, 1947 and hence the present reference is not maintainable is devoid of merit. The issue No. 2 is therefore answered in the negative.

44. Issue No. 3:

I have heard the oral arguments of the Ld. Advocates appearing for the respective parties. I have carefully considered oral submissions made by the Ld. Advocates for the respective parties.

45. The Employer in its written statement filed in the present proceedings contended that All Goa General Employees Union has no locus standi to raise the present dispute. The burden to prove the aforesaid contention is therefore on the Employer. The Employer has however, failed to adduce any material evidence either oral or documentary in support of its aforesaid contention. On the contrary, the oral evidence of the workman on record indicates that all the workers of the Employer including the workman had initially joined the "Gomantak Mazdoor Sangh" and the said fact was officially notified to the Employer on 19-2-2006. The evidence on record indicates that on 8-3-2006 the "Gomantak Mazdoor Sangh" raised an 'industrial dispute' espousing the cause of termination of the workman. The evidence on record indicates that during the pendency of the industrial dispute, all the workers of the Employer including the workman resigned from the Gomantak Mazdoor Sangh and joined All Goa General Employees Union which continued to espouse his cause of termination. The aforesaid evidence adduced by the workman has remained unchallenged for want of denial. The aforesaid evidence on record clearly established that All Goa General Employees Union has locus standi to raise

the present dispute. Hence it is held that the Employer failed to prove that All Goa General Employees Union has no locus standi to raise the present dispute. The issue No. 3 is therefore answered in the negative.

46. *Issue No. 4 and 5:*

I am deciding the issue No. 4 and 5 simultaneously as both the issues are co-related to each other.

47. I have heard the arguments of Ld. Advocates appearing for respective parties.

48. Ld. Adv. Shri. T. Pereira representing the workman during the course of his oral arguments submitted that the Party I is a 'workman' within the meaning of section 2(s) of the I. D. Act, 1947 and as such the present dispute raised by the Party I against the Employer pertaining to his non-employment is therefore an 'industrial dispute' within the meaning of section 2(k) of the I. D. Act, 1947. This court therefore has every jurisdiction to adjudicate the present dispute referred by the Government of Goa. He submitted that the workman was refused employment illegally and by way of victimization with effect from 07-03-2006 due to formation of the union. He submitted that at the final stage of the conciliation proceedings held on 09-02-2007, the Employer for the first time came out with a plea of alleged loss of confidence in the workman, without disclosing any justification for the same. He submitted that the Employer has failed to disclose the alleged loss of confidence reposed in the workman nor produced on record any evidence about the alleged loss of confidence in him nor given any opportunity to the workman to explain the alleged loss of confidence. He therefore submitted that the action of the Employer in refusing employment to the workman on and from 07-03-2006 amounts to illegal termination of services of the workman as neither any domestic enquiry has been conducted against the workman before termination of his services nor offered or paid any legal dues to the workman at the time of termination of his services to claim valid discharge from service.

49. On the contrary, Ld. Adv. Shri P. Chawdikar representing the Employer during the course of his oral argument submitted that neither the Party I is a 'workman' within the meaning of provisions of the Industrial Disputes Act, 1947 nor the dispute raised by him is an 'industrial dispute' within the meaning of provisions of the Industrial Disputes Act, 1947 and as such the present reference is not

maintainable. He submitted that the services of the Party I has been terminated by the Employer by way of discharge simpliciter on account of loss of confidence in him. He submitted that the termination of services of the Party I with effect from 07-03-2006 is just, fair and legal and relied upon a decision in the case of **Sanjeev Kumar Mahapatra v/s A. L. Alsapurkar and Anr., reported in 2003 (3) BOM C.R. 249** of Hon'ble High Court of Bombay.

50. I have carefully perused the entire records of the case. I have also carefully considered the various oral submissions made by the Ld. Advocates for the respective parties.

51. While deciding the Issue no. 1 herein above, I have come to the conclusion and held that the Party I is a 'Workman' within the meaning of section 2(s) of the I. D. Act, 1947. Similarly while deciding the issue no. 2 herein above, I have come to the conclusion and held that the dispute raised by the Workman is an industrial dispute within the meaning of section 2(k) of the I. D. Act, 1947 and as such this court has every jurisdiction to adjudicate the present reference. I have also come to the conclusion and held that All Goa General Employees Union has locus standi to espouse the cause of termination of service of the workman, while deciding the issue No. 3 hereinabove.

52. Aggrieved by the order of termination of service of the workman, the union espoused the cause of termination of the service of the Workman by raising the present dispute. The union in its statement of claim filed in the present proceedings challenged the termination of services of the Workman with effect from 07-03-2006 by contending that the refusal of service to the Workman with effect from 07-03-2006 amounts to illegal termination as neither enquiry has been conducted against the Workman nor offered or paid him legal dues at the time of termination of his services. On the contrary, the Employer defended its action of terminating the services of the Workman with effect from 07-03-2006 by contending that the termination of service of the Workman is by way of discharge simpliciter on account of loss of confidence in him and as such it is just, legal and fair.

53. The evidence on record indicates that the property of the Employer establishment namely Gomango Bar & Restaurant is located at Kundaim near the Panaji-Belgaum road. The evidence on record indicates that there are two gates manned

with security personnel, one for the entrance of the customers and another for its employees as well as for all service vehicles. The evidence on record indicates that the Employer used to maintain the register of the employees entering or leaving from the said gate. The evidence on record further indicates that during the course of cross-examination of the Employers first witness Shri Ulhas Nabar by the Ld. Adv. Shri T. Pereira appearing for the workman admitted that if the workman entered in the premises of the Employer on 07-03-2006, then his signature would have appeared in the entry as well as exit register maintained by the Employer. He also deposed that the said entry register is available with the Employer. He deposed that he can produce the said entry register maintained by the Employer if directed by this court. Accordingly the witness of the Employer was directed to produce the said entry register maintained by the Employer. The said witness of the Employer however, could not produce the said entry register maintained by the security personnel at its main gate by alleging that it is not available. Hence an adverse inference is drawn against the Employer and it is held that if the said entry register maintained by the Employer at its security gate would have produced by the said witness of the Employer, it would have been exposed the case of the Employer by not reflecting the signature of the workman. Hence it is held that the workman was refused employment by the Employer with effect from 07-03-2006. The said refusal of employment to the workman amounts to termination of services of the workman with effect from 07-03-2006. The evidence on record indicates that no enquiry of whatsoever nature has been conducted against the workman prior to the termination of his services nor offered or paid his legal dues to the workman at the time of termination of his services.

54. The oral evidence of the workman on record indicates that he was refused employment by the Employer on and from 7-3-2006. Though the Employer contended that the services of the workman were terminated by way of discharge simplicitor on account of loss of confidence in him, no letter of termination was issued to the workman in writing by the Employer. The evidence on record indicates that the Employer for the first time came out with a defence of termination of services of the workman by way of discharge on account of loss of confidence in him only on 28-2-2007 vide its letter dated 22-2-2007 during the course of conciliation proceedings pending before the Asstt.

Labour Commissioner, Ponda, Goa. The evidence on record further indicates that the Employer has failed to convey its decision of termination of services of the workman by way of alleged discharge on account of allegedly loss of confidence in him at any point of time before the termination of his services. Thus, the letter of the Employer dated 22-2-2007 addressed to the Asst. Labour Commissioner, Ponda, Goa is an after thought.

55. It is the case of the Employer that it has terminated the services of the workman by way of discharge on account of loss of confidence in his abilities by paying his legal dues vide its letter dated 5-3-2006 addressed to the Party I along with a cheque dated 7-3-2006 drawn on HDFC bank for an amount of Rs. 9,714/- in favour of the Party I. The Employer has also produced its letter dated 5-3-2006 along with cheque dated 7-3-2006 (Exb. E/4-colly) The evidence on record indicates that the Employer has failed to produce on record any show cause notice or charge sheet etc. if any issued to the workman pointing out his alleged misconduct which reposed the Employer loss of confidence in his abilities. The evidence on record indicates that the workman was refused the employment by the Employer with effect from 07-03-2006. Hence the question of issuing its letter dated 05-03-2006 along with a cheque dated 07-03-2006 for an amount of Rs. 9,714/- on 7-3-2006 in the Employer's establishment does not arise. Thus, the evidence on record indicates that the workman was not paid or tendered his legal dues at the time of termination of his services w. e. f. 07-03-2006. Even otherwise, on perusal of the letter of the Employer dated 05-03-2006 addressed to the workman at Exb.E/4-colly, it reveals that the Employer had allegedly offered to the workman his legal dues i.e. one month's notice pay, current month's salary and leave encashment by cheque dated 07-03-2006 without giving breakup of the amount offered on each head. The letter of the Employer dated 05-03-2006 at Exb. E/4 colly do not indicate that the workman was offered or paid retrenchment compensation as mandatorily required under sub-section (b) of section 25-F.

56. Ld. Adv. P. Chawdikar representing the Employer during the Course of his oral arguments relied upon a judgment in the case of **Sanjiv Kumar Mahapatra v/s A. L. Alaspurkar and Anr. reported in 2003(3) Bom. C.R. 249** of Hon'ble High Court of Bombay. In the said case before the

Hon'ble High Court of Bombay the Petitioner was employed as Driver with the Respondent. His services were terminated by the Employer by order dated 05-04-1989 in terms of letter of appointment on account of threat given by him to the Director. The Petitioner filed a complaint before the Labour Court. The Labour Court granted reinstatement with 50% back wages to the petitioner. In a revision petition filed by the Respondent, the Industrial Court, allowed the said revision Petition and dismissed the revision application filed by the Petitioner in writ petition filed by the Petitioner before the Hon'ble High Court of Bombay has upheld the order of the Industrial Court. The facts of the case in hand is totally different than the aforesaid case, hence, the principle laid down by the Hon'ble High Court of Bombay in its aforesaid judgment is not applicable to the present case.

57. In the case in hand, the workman was designated as 'Kitchen Supervisor' since 27-1-2004 till the date of refusal of employment to him with effect from 7-3-2006. The workman was refused the employment w.e.f. 7-3-2006 without issuing him any termination letter in writing. Though the Employer contended that it has terminated the service of the workman by way of discharge on account of loss of confidence in his abilities, no material evidence of whatsoever nature has been produced on record to prove the loss of confidence in the workman. The Employer has even failed to comply the mandatory provisions of section 25-F of the I. D. Act, 1947 while terminating the services of the workman. In the circumstances the termination of service of the workman w. e. f. 07-03-2006 is illegal and unjustified. The issue No. 4 is answered in the negative and issue no. 5 is answered in the affirmative.

58. Issue No. 6:

While deciding the issue No. 5 herein above, I have come to the conclusion and held that the refusal of employment to the workman w. e. f. 07-03-2006 is illegal and unjustified.

59. In the case of **Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal & Ors., reported in (2010 III CCR 17)**, it is held that *"it is very well settled principles that relief by way of reinstatement with back wages, is not automatic, even if termination of workman is illegal or in contravention of prescribed procedure. In some cases, grant of monetary compensation may be an appropriate relief looking to Respondent having put in hardly 2 to 3 years service,*

compensation of Rs. 40,000/- to workman would meet ends of justice."

60. In the case of **Kendriya Vidyalaya Sangathan and Anr v/s S. C. Sharma, reported in 2005(104) FLR 863**, the Hon'ble Apex Court in para-15 of its aforesaid Judgement has ruled as under:

"15 When the question of determining the entitlement of a person to back wages is concerned, the employee has to show that he was not gainfully employed. The initial burden is on him. After and if he places material in that regard, the employer can bring on record materials to rebut the claim. In the instant case, the respondent had neither pleaded nor placed any material in that regard." I am bound by the precedent laid down by the Hon'ble Supreme Court of India in its aforesaid Judgement.

61. In the case of **M/s Reetu Marbles v/s Prabhakant Shukla and Anr. reported in 2010 (124) FLR 72**, the Hon'ble Supreme Court of India has held that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken up by the court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and/or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched"*.

62. **The Hon'ble Supreme Court of India** in its another case of **Jagbir Singh v/s Haryana State Agriculture Marketing Board & anr., reported in 2009 III CLR 628**, has held that *"it is true that the earlier view of this Court articulated in many decisions reflected the legal position that if the termination of an employee was found to be illegal, the relief of re-instatement with full back wages would ordinarily follow. However, in the recent past, there has been a shift in the legal position and in a long line of cases, this Court has consistently taken the view that relief by way of re-instatement with back wages is not automatic and may be wholly inappropriate in a given factual situation even though the termination of an employee in contravention of the prescribed procedure, compensation instead of re-instatement has been held to meet the ends of justice"*.

63. Thus, the Hon'ble Apex Court in its various series of decisions has consistently held that a relief of reinstatement with full back wages and consequential benefits is not automatic, even if the termination of the workman is illegal or in contravention of prescribed procedures. I am bound by the precedent laid down by the Hon'ble Apex Court in its aforesaid decisions.

64. In the case in hand, the evidence on record indicates that the Workman has prayed for his reinstatement in service with full back wages and continuity in service. The workman has however neither pleaded nor stated on oath that after the termination of his service, he is gainfully unemployed. The evidence on record indicates that the Workman was in employment of the Employer for the period starting from 27-01-2004 continuously till the date of his termination of service w.e.f. 07-03-2006. Thus the Workman was in the services of the Employer for two years. The evidence on record indicates that the Workman was 55 years old as on 16-09-2008. In my opinion grant of monetary compensation of Rs.1,00,000/- (Rupees One lakh only) to the Workman would be the appropriate relief to meet the ends of justice in the present case,

In the circumstances I pass the following

ORDER

1. It is held that the action of the Management of M/s. Link Hospitality Services Private Limited, at Gomango Bar and Restaurant, Kundaim, in discharging from service Shri Anand Dessai, Kitchen Supervisor, with effect from 07-03-2006, on the grounds of loss of confidence, is illegal and unjustified.
2. It is ordered that the Management of M/s. Link Hospitality Services Private Limited, at Gomango Bar and Restaurant, Kundaim, is ordered to pay to the Workman Shri Anand Dessai a sum of Rs. 1,00,000/- (Rupees one lakh only) as monetary compensation.
3. No order as to cost.
4. Inform the Government accordingly.

Sd/
(Suresh N. Narulkar),
Presiding Officer,
Labour Court-II.

Department of Public Health

Order

No. 38/242/2006-I/PHD

Government is pleased to recognize "Vision Multispeciality Hospital, Mapusa-Goa" for the purpose of Mediclaim under Mediclaim scheme and for Medical Reimbursement of Government employees, Freedom Fighters, MLAs under the Central Service (MA) Rules, 1944 for facilities, of "Haemodialysis in the Renal failure cases" restricting the amount to ₹ 1,300/- per dialysis or ₹ 13,000/- per month for a minimum of 10 dialysis with immediate effect. The above Hospital shall not charge any extra amount in any manner to the dialysis patient.

This issues with the concurrence of Finance (Exp) Department vide thier U.O. No. Fin(Exp)/1447609/F dated 20-09-2013.

This issues in supersession of order No. 38/242/2006-I/PHD dated 14-08-2013.

By order and in the name of the Governor of Goa.

Maria Seomara Desouza, Under Secretary (Health-II).

Porvorim, 26th September, 2013.

Order

No. 45/4/2013-I/PHD

- Refer: 1. Government Order No. 45/4/2013/I/PHD dated 08-08-2013.
2. Order No. 1/1/2012/II/PHD/Part 2 dated 27-09-2013.
3. Order No. Acad/175/GMC/12/504 dated 30-09-2013.

Consequent upon the orders referred at preamble Dr. Bandekar Anuya Anant, M.D. Pathology, Sr. Consultant appointed on contract basis under the Directorate of Health Services for a period of one year and posted at Hospicio Hospital, Margao is hereby relieved from the post of Sr. Consultant under Directorate of Health Services with immediate effect.

By order and in the name of the Governor of Goa.

D. G. Sardesai, Addl. Secretary (Health).

Porvorim, 1st October, 2013.

Certificate

No. 44/48/2012-I/PHD

- Read: 1. Memorandum No. 47/60/2011-I/PHD dated 29-05-2012.
2. Government Order No. 47/60/2011-I/PHD dated 06-07-2012.

Certified that the character and antecedents of Smt. Manasi Dessai, Dietician of Cottage Hospital, Chicalim under Directorate of Health Services has been verified by the District Magistrate, South Goa, Margao and nothing adverse has been reported against her as informed vide letter No. 2013/3906/2/MAG/141/7444 dated 29-07-2013.

D. G. Sardessai, Addl. Secretary (Health).

Porvorim, 27th September, 2013.

Addendum

No. 45/3/2013-I/PHD (Part)

- Read: 1. Government Order No. 45/3/2013-I/PHD (Part) dated 23-09-2013.

In the Government order refer at preamble above, the following last para shall be added:

Dr. Vandana Patankar, Dy. Director, Directorate of Health Services, Panaji, shall be on deputation as Project Director in Goa State Aids Control Society, Panaji for an initial period of one year.

By order and in the name of the Governor of Goa.

D. G. Sardessai, Addl. Secretary (Health).

Porvorim, 30th September, 2013.

Raj Bhavan**Order**

No. GS/ADC-AF/PER/128/2013/2067

- Read: 1) Communication No. Air HQ/21974/ADC/PO-1(Dep) dated 13-9-2013 from Wing Commander, Air Headquarters, Vayu Bhavan, New Delhi-110106.
2) Joining Report dated 20-9-2013 of Sqn Ldr Himanshu Tiwari (28020), F (N).

The Hon'ble Governor of Goa is pleased to appoint Sqn Ldr Himanshu Tiwari (28020) F(N), IAF to the post of A.D.C. to Governor at Raj Bhavan, Goa, for a period of two years, with effect from 20-09-2013 (b.n.).

2. The appointment of Sqn Ldr Himanshu Tiwari (28020) F(N) is subject to the terms and conditions applicable to such appointment as per guidelines.

3. The pay and allowances of Sqn Ldr Himanshu Tiwari (28020) F(N) will be fixed separately, on receipt of his last pay certificate.

Neeraj Semwal, IAS, Secretary to the Governor.

Dona Paula, 1st October, 2013.

Department of Revenue**Order**

No. 23/11/2012-RD

Whereas the Government of Goa, vide Notification No. 23/11/2012-RD dated 06-06-2012, issued under sub-section (1) of section 4 of the Land Acquisition Act, 1894 (Act 1 of 1894) (hereinafter referred to as the "said Act") and published in the Official Gazette, Series II No. 11 dated 14-06-2012, notified that the land specified in the Schedule thereof (hereinafter referred to as the "said land") is likely to be needed for public purpose viz. Land Acquisition for construction of road at Monteirawado, Francis Pereirawado, Francis Costawado, Calata-Majorda, Utorda, in Village Utorda of Salcete Taluka. (hereinafter referred to as the "said public purpose");

And whereas, the Government of Goa, considered the report made by the Collector under sub-section (2) of section 5-A of the said Act and on being satisfied that the said land is needed for the said public purpose, vide Notification No. 23/11/2012-RD dated 20-03-2013, issued under section 6 of the said Act, and published in the Official Gazette, Series II No. 52 dated 28-03-2013, declared that the said land is required for the said public purpose.

Now, therefore, in exercise of the powers conferred by section 7 of the Land Acquisition Act, 1894 (Act 1 of 1894), the Government of Goa hereby directs the Collector, South Goa District, Margao-Goa to take the order for acquisition of the said land.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).

Porvorim, 4th October, 2013.

Notification

No. 22/24/2013-RD

Whereas it appears to the Government of Goa (hereinafter referred to as "the Government") that the land specified in the Schedule hereto (hereinafter referred to as the "said land") is likely to be needed for public purpose, viz. Land Acquisition for the construction of Modern Fire Station at Bicholim.

Now, therefore, the Government hereby notifies under sub-section (1) of Section 4 of the Land Acquisition Act, 1894 (Central Act 1 of 1894) (hereinafter referred to as "the said Act") that said land is likely to be needed for the purpose specified above.

2. All persons interested in the said land are hereby warned not to obstruct or interfere with any surveyor or other persons employed upon the said land for the purpose of the said acquisition. Any contract for the disposal of the said land by sale, lease, mortgage, assignment, exchange or otherwise or any outlay commenced or improvements made thereon without the sanction of the Collector appointed under paragraph 4 below, after the date of the publication of this notification, will under clause (seventh) of Section 24 of the said Act be disregarded by him while assessing compensation for such parts of the said land as may be finally acquired.

3. If the Government is satisfied that the said land is needed for the aforesaid purpose, a declaration to that effect under Section 6 of the said Act will be published in the Official Gazette and in two daily newspapers and public notice thereof shall be given in due course. If the acquisition is abandoned wholly or in part, the fact will also be notified in the same manner.

4. The Government further appoints under clause (c) of Section 3 of the said Act the Collector & SDO, Bicholim-Goa to perform the functions of a Collector, North Goa District, Panaji-Goa under the said Act in respect of the said land.

5. The Government also authorizes under sub-section (2) of Section 4 of the said Act, the following Officers to do the acts, specified therein in respect of the said land.

1. The Collector, North Goa District, Panaji-Goa.
2. The Dy. Collector & SDO, Bicholim-Goa.
3. The Director, Fire & Emergency Services, St. Inez, Panaji-Goa.
4. The Director of Settlement and Land Records, Panaji-Goa.

6. A rough plan of the said land is available for inspection in the Office of the Dy. Collector & SDO, Bicholim-Goa, for a period of 30 days from the date of publication of this Notification in the Official Gazette.

SCHEDULE

(Description of the said land)

Village: Bicholim Taluka: Bicholim

| Survey No./ Sub-Div. No. | Names of the persons believed to be interested | Approx. area in sq. mts. |
|-----------------------------|---|--------------------------------|
|-----------------------------|---|--------------------------------|

| 1 | 2 | 3 |
|------|---|------|
| 57/5 | O: Shri Suresh Gajanan Lawanis. O: Shri Anil Gajanan Lawanis. O: Shri Rajanikant Gajanan Lawanis. | 1650 |
| 57/6 | O: Shri Suresh Gajanan Lawanis. O: Shri Anil Gajanan Lawanis. O: Shri Rajanikant Gajanan Lawanis. | 1750 |
| 57/7 | O: Shri Suresh Gajanan Lawanis. O: Shri Anil Gajanan Lawanis. O: Shri Rajanikant Gajanan Lawanis. | 2079 |

Boundaries :

North : S. No. 57/4.

South : S. No. 57/7.

East : S. No. Nalla.

West : S. No. 55/2.

Total: 5479

By order and in the name of the Governor of Goa.

Ashutosh Apte, Under Secretary (Revenue-I).

Porvorim, 1st October, 2013.

Notification

File No. 40/1/2013-RD

Read: Government Notification No. 16/3/95-RD dated 22-09-1995, published in the Official Gazette (Extraordinary No. 2), Series II No. 25, dated 22-09-1995, as amended vide Government Notification No. 16/3/95-RD dated 27-12-1995, published in the Official Gazette (Extraordinary No. 2), Series II No. 39, dated 29-12-1995.

In exercise of the powers conferred by sub-section (1) of Section 6 of the Goa Land (Prohibition on construction) Act, 1995 (Goa Act No. 20 of 1995) (hereinafter called the "said Act") and all other powers enabling it in this behalf and in supersession of the Government Notification cited above as also other Notification that may have been issued in this regard, the Government of Goa hereby specifies the officers mentioned in column (2) of the Schedule hereinbelow (hereinafter referred to as the "said Schedule"), as the authorities for the limits of the local areas as mentioned in the corresponding entries in column (3) of the said Schedule, for the purpose of said sub-section (1) of Section 6 of the said Act.

SCHEDULE

| Sr. No. | Officers | Local area |
|---------|--|---|
| 1 | 2 | 3 |
| 1) | Deputy Director of Tourism | Whole of the State of Goa. |
| 2) | Executive Engineer, Public Works Department | Respective Division/ /Circle. |
| 3) | Executive Engineer, Water Resources Department | Respective Division/ /Circle. |
| 4) | Executive Engineer, Electricity Department | Respective Division/ /Circle. |
| 5) | Deputy Director of Transport | Whole of the State of Goa. |
| 6) | Mamlatdar of the Taluka | Respective Taluka. |
| 7) | Block Development Officer of the Taluka | Respective Block. |
| 8) | Administrators of Comunidades of North Zone, Central Zone and South Zone | Respective Zone. |
| 9) | Police Officer in-charge of Police Station | Respective Police Station Jurisdiction. |

| 1 | 2 | 3 |
|-----|---|---|
| 10) | Chief Executive Officers of Zilla Panchayat | Respective Zilla. |
| 11) | Chief Officer of the Municipality | Respective Municipal areas. |
| 12) | Commissioner of Corporation of the City of Panaji | Jurisdiction of the Corporation of City of Panaji. |
| 13) | Chief General Manager of Industrial Development Corporation | Land comprising the Industrial Estate. |
| 14) | Chief General Manager of Economic Development Corporation | Land belonging to the Economic Development Corporation. |
| 15) | Executive Engineer, Goa Housing Board | Respective District. |
| 16) | Deputy Director/ /Director of the Department | Land belonging to the Department. |
| 17) | Chief General Manager/Managing Director/General Manager of the Corporation or Undertaking constituted under the State Enactment, or of Government Company | Land belonging to the respective Corporation |
| 18) | Executive Engineer of the Board | Land belonging to the Board. |

This Notification shall come into force with immediate effect.

By order and in the name of the Governor of Goa.

Anju S. Kerkar, Under Secretary (Revenue-II).

Porvorim, 30th September, 2013.

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